IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.121 OF 2004

Western Maharashtra Infrastructure
Pvt.Ltd. ...Applicant

vs.

Kolhapur Municipal Corporation ...Respondent

Mr.N.V.Walawalkar i/b Mr.A.B.Borkar for the Applicant
Mr.S.S.Patwardhan for the Respondent

CORAM: A.S.OKA,J.
DATE : JUNE 7, 2007.

ORAL JUDGMENT:

1. On 27th April 2006, this Revision Application was ordered to be placed for direction on 5th June 2007. On 5th June 2007, by consent of the learned Counsel for the parties, this Revision Application was taken up for final disposal. On 5th June 2007 and 6th June 2007 the submissions of the learned Senior Counsel appearing for the Applicant and the Advocate on record for the Applicant were heard. I have also heard the Advocate for the Respondent. Today the Revision Application is kept for dictation of the Judgment.

2. It will be necessary to refer to the facts of the case in brief. The dispute between the Applicant and the Respondent was referred to arbitration. An Award was made on 12th November 2003. An Application was filed by the Respondent herein under section 34 of the Arbitration and Conciliation Act,1996 (herein referred to as the said Act of 1996) for setting aside the arbitral Award. The said Application was

filed in the Court of the learned Civil Judge, Senior Division, Kolhapur. A contention was raised on behalf of the Revision Applicant that the court of the Civil Judge Senior Division had no jurisdiction to entertain the said Application and the application under section 34 of the said Act of 1996 ought to have been filed in the appropriate District Court. By a Judgment and Order dated 28th July 2004, the said Application was rejected by holding that the court of Civil Judge, Senior Division was the proper court having jurisdiction to entertain the Application under section 34 of the said Act of 1996. Rule was issued by this Court on 1st October 2004. As there was a conflict of the decisions of the learned Single Judges of this Court on the issue of interpretation of the word 'Court', while issuing rule, this Court directed that the Revision Application needs to be placed before the Hon'ble the Chief Justice for the purpose of placing the Revision Application before a larger Bench.

3. Accordingly, as per the order of the Hon'ble the Chief Justice, issue was referred to the larger Bench which has been decided by the Judgment and Order dated 12th April 2007. In fact, this Revision Application was also placed before the larger Bench along with other connected matters. The Full Bench has answered the issue in paragraph 18 of its Judgment which reads thus :

"18. We, accordingly, answer the question formulated by us in paragraph 2 of the judgment as follows :

. The principal civil court of original jurisdiction in a district for the purpose of a petition under section 34 of the said Act of 1996 is a District Court and does not include any other court inferior to the District Court."

4. In view of the decision of the Full Bench, the Revision Application must succeed as the view taken by the Full Bench is that the District Court is the proper court having jurisdiction to entertain an Application under section 34 of the said Act of 1996.

5. The learned Advocate for the Respondent submitted that instead of ordering return of the Application under section 34 of the said Act of 1996 for presentation to the proper court, the same may be ordered to be transferred to the appropriate District Court to avoid the multiplicity of the proceedings. He submitted that in any case, the Respondent will be entitled to benefit of section 14 of the Limitation Act, 1963 (hereinafter referred to as the said Act of 1963).

6. The learned Advocate on record for the Revision Applicant opposed the said suggestion by relying upon the proviso to section 115 of the Code of Civil Procedure,1908 incorporated by amendment made in the year 2002. He submitted that if the Revision Application is to succeed, the order passed by this Court must have the result of final disposal of the main

proceeding. He disputed that the provision of section 14 of the said Act of 1963 will apply to a proceeding under section 34 of the said Act of 1996. He submitted that the only order which can be passed is of the return the Application filed by the Respondent for presentation to the appropriate court.

7. I have considered the submissions. As stated earlier, it is obvious that the Application was filed in the court which was not having jurisdiction to entertain the same. The decision of the Full Bench referred to above notes that there was a divergence of opinion in two Judgments of the learned Single Judges of this Court. Both the decisions have been rendered prior to the year 2004. As there was a serious controversy regarding the correct interpretation of the word 'Court' in clause (e) of section 2 of the said Act of 1996, a reference was required to be made to the larger Bench. Sub Section 2 of section 14 of the said Act of 1963 reads thus :

> 14(2) In computing the perod of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

8. In a recent decision of the Apex Court in case of State of Goa Vs. Western Builders [(2006) 6 S.C.C. page 239], the Apex Court held that section 14 of the said Act of 1963 is applicable to the arbitration proceeding under the said Act of 1996. The Apex Court has considered the provisions of section 34 of the said Act of 1996 in the light of section 43 of the said Act of 1996. Therefore, there cannot be any dispute that the provisions of section 14 of the said Act of 1963 will certainly apply to the proceedings under the said Act of 1996. When an Application was filed by the Respondent in the Court of Civil Judge, Senior Division, there was at least one view of the learned Single Judge of this Court holding that the Court of Civil Judge (Senior Division) was the 'court' within the meaning of clause (e) of section 2 of the said Act of 1996. It is, thus, obvious that there cannot be a better case for applying sub section 2 of section 14 of the Limitation Act, 1963.

9. The only question to be decided is whether this Court while allowing the Revision Application can direct the transfer of the Application made by the Respondent to the proper court having jurisdiction. Reliance was placed by the learned Counsel for the Applicant on the proviso incorporated in section 115 by amendment of the year 2002. The said provision reads thus :

115. Revision -

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

. (a) to have exercised a jurisdiction not vested in it by law, or

. (b) to have failed to exercise a jurisdiction so vested, or

. (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

. the High Court may make such order in the case as it thinks fit:

. [Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party apply for revision, would have finally disposed of the suit or other proceedings.]

The proviso lays down the scope of the Revision under section

115 of the said Code. The proviso restricts the availability of remedy of a Revision Application only to those cases where the order impugned is such that if it had been made in favour of the Revision Applicant, it would have finally disposed of the suit or other proceeding. The proviso does not take away the power of the High Court to pass such order as it thinks fit in a Revision Application which is maintainable. In a given case, in a Revision Application which is maintainable, the High Court can always pass an order of remand. There cannot be a dispute in the present case that this Revision Application filed by the Revision Applicant is maintainable. In any case, the Revision Applicant himself cannot contend that the Revision Application is not maintainable. Therefore, the submission made by the Advocate on record for the Applicant on the basis of the newly added proviso to section 115 of the said Code will have to be rejected.

10. It will be necessary to refer to section 24 of the said Code. The said section vests a power in this Court to transfer any suit or other proceeding pending in any court subordinate to the High Court to the other court competent to try and dispose of the same. The said power can be exercised by this Court on its own motion without notice to the parties. Sub section 5 of section 24 of the said Code reads thus :

> (5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to

try it.

Thus, power under section 24 of the said Code can be exercised in respect of a suit or proceeding which is pending in a court having no jurisdiction to try it. In the present case, as held earlier, the Respondent will be entitled to protection of section 14 of the said Act of 1963. As indicated above, this court is not powerless to pass an order of transfer. In the present case, relegating the parties to fresh proceedings by way of application for condonation of delay will be nothing but multiplicity of the proceeding. The said approach has to be avoided especially in a case like this where the litigant cannot be blamed for filing the proceeding in a particular court on the date on which the proceeding was filed. Therefore, this is a fit case for transferring the case filed by the Respondent to the District Court at Kolhapur.

11. Hence, I pass the following order :

i) Impugned Judgment and Order dated 28th July 2004 is quashed and set aside. It is declared that the Civil Judge (Senior Division), Kolhapur does not have jurisdiction to entertain the Application under section 34 of the said Act of 1996.

ii) Miscellaneous Application No.329 of 2003 is hereby transferred from the court of Civil Judge (Senior Division) Kolhapur to the District Court, Kolhapur for

hearing and final disposal. In view of the applicability of section 14 of the said Act of 1963, the Application will be treated as filed within stipulated period of limitation.

iii) The District Court, Kolhapur to decide the Application as expeditiously as possible and preferably on or before 31st January 2008.

iv) All contentions of the parties on merits of the Application are kept open.

v) Writ to be sent immediately.

JUDGE